



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/639,690	08/16/2000	ANDREW K. BENSON	101997-5	3073

21125 7590 06/15/2004

NUTTER MCCLENNEN & FISH LLP  
WORLD TRADE CENTER WEST  
155 SEAPORT BOULEVARD  
BOSTON, MA 02210-2604

EXAMINER

LEFFERS JR, GERALD G

ART UNIT	PAPER NUMBER
----------	--------------

1636

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/639,690

Applicant(s)

BENSON, ANDREW

Examiner

Gerald G Leffers Jr., PhD

Art Unit

1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8, 9, 14, 17-21 and 23-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 9, 14, 17-21 and 23-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

Receipt is acknowledged of an amendment, filed 3/19/2004, in which several claims were amended (claims 1-2, 5, 9, 14). Claims 1-6, 8, 9, 14, 17-21 and 23-31 are pending and under consideration in the instant application.

Any rejection of record in the previous office actions that is not addressed herein is withdrawn. This action is not final as there are new grounds of rejection made herein that were not necessitated by applicant's amendment of the claims in the papers filed 3/19/2004.

#### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter that the applicant regards as his invention.

Claims 1-6, 8, 9, 14, 17-21 and 23-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. **These are new grounds of rejection.**

Claim 1 is vague and indefinite in that the metes and bounds of the phrase "storing a sample profile containing data for the at least one known organoleptic property of the sample in the database; and correlating the output distribution with the at least one known organoleptic property" are unclear. It is unclear what information is encompassed by the phrase "sample profile containing data for the at least one known organoleptic property of the sample". For example, it is unclear whether the "sample profile" would necessarily be limited to information within the output distribution for the first sample, or indeed, whether it necessarily consists of the output distribution itself. Alternatively, it appears the "sample profile" may be intended to only

Art Unit: 1636

include information that is not part of the output distribution (e.g. type of food, processing information such as batch numbers, storage conditions, etc.). It would be remedial to amend the claim language to clearly indicate the type of information that is necessarily present in and/or excluded by the term “sample profile” in the context of the recited method.

Claim 14 is vague and indefinite in that the metes and bounds of the phrase “preparing an array having a plurality of probes, **each probe** being directed to gene sequences from a plurality of different target species of organisms” are unclear (examiner’s emphasis added). It is unclear as the claim is currently written whether the phrase is intended to specify that each probe necessarily hits multiple target sequences from a plurality of different species, or alternatively, if the probe is intended to target a specific sequence obtained from a plurality of sequences obtained from a plurality of different species? It would be remedial to amend the claim language to clearly distinguish between the two possibilities.

Claim 21 is vague and indefinite in that it is dependent upon claim 16, which has been cancelled.

Claim 23 is vague and indefinite in that the metes and bounds of the phrase “wherein the target sequences are species sequences selected for efficient probe hybridization and detection as a group” are unclear. It is unclear how efficient the hybridization needs to be in order to satisfy the subjective limitation of being “efficient”. It is also unclear what is intended by the term “detection as a group”. Does the term imply that all of the different species are detected by a single probe or simply under the same hybridization conditions?

***Conclusion***

No claims are allowed. This action is not final. The recited methods appear to be free of the art. Applicant's representative is invited to contact the examiner in order to clarify language changes that should put the claims into condition for allowance.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald G Leffers Jr., PhD whose telephone number is (571) 272-0772. The examiner can normally be reached on 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel can be reached on (571) 272-0781. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gerald G Leffers Jr., PhD  
Primary Examiner  
Art Unit 1636

ggf

  
GERRY LEFFERS  
PRIMARY EXAMINER